

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

**BAKER BOTTS** LLP

2007 JUL 17 PM 5:00

CHIEF CLERKS OFFICE

July 17, 2007

Derek Seal, Esq.  
General Counsel  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

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WATER & WASTE

Pamela M. Giblin  
TEL 512 322.2509  
FAX 512 322.8308  
pam.giblin@bakertb.com

Re: TCEQ Docket No. 2007-1019-IHW<sup>1</sup>; Petition of Texas Disposal Systems  
Landfill, Inc. for Review of the Executive Director's Action and Order regarding  
Management of Hazardous Waste

Dear Mr. Seal:

On Friday afternoon (July 13, 2007), I received a facsimile from you stating that you had scheduled the above-referenced petition of Texas Disposal Systems Landfill, Inc. ("TDSL") for consideration by the Commission at its July 25, 2007 agenda. By this letter Penske Truck Leasing Co., L.P. and Penske Logistics, Inc. (collectively, "Penske") requests a short continuance of this setting, until the August 8, 2007 agenda.

Penske's client representative, Mr. Michael Duff, Senior Vice President and General Counsel, is scheduled to attend a mandatory settlement conference in a case pending in the U.S. District Court, Eastern District of Michigan, on July 25, 2007. Mr. Duff has been intimately involved in this matter, having been present at and participated in all significant Legislative, TCEQ and trial settings and other proceeding regarding this matter, as well as discussions relating to efforts to resolve this matter, since May 2003. Penske requests a short continuance so that Mr. Duff can attend both the mandatory settlement conference and the TCEQ agenda. Mr. Duff's participation on behalf of Penske is critical at the TCEQ agenda and in the interest of due process we ask for this short continuance. As it is, this matter has been set with extraordinary haste, notwithstanding that the Commission has considered this before on multiple occasions.

On June 21, 2007, TDSL, in anticipation of the October 2007 trial of its nearly ten-year-old private party lawsuit against Penske (and others), filed its petition seeking the Commission to revisit its prior decisions and those of the Executive Director with respect to the management of material from a 1997 traffic accident. On June 28, 2007, the General Counsel invited certain designated persons to submit briefs on the petition no later than July 11, 2007. Briefs were submitted by Penske, the Executive Director, and the Office of Public Interest Counsel as well as Texas Campaign for the Environment, which was not invited to submit a

<sup>1</sup> This matter is a continuation of a matter previously docketed as TCEQ Docket No. 2004-0984-IHW-E. Decisions of the TCEQ in this docketed matter are on appeal.

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Derek Seal, Esq.

- 2 -

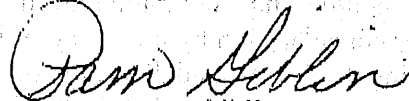
July 17, 2007

brief.<sup>2</sup> On July 13, 2007, the General Counsel set the Petition for consideration at the Commission's July 25th agenda. As indicated above, Mr. Duff is scheduled to attend a mandatory settlement conference in a case pending in the U.S. District Court, Eastern District of Michigan, and a short continuance is being sought that will still enable the Petition to be briefed and considered within a very prompt six weeks of its being filed.

Additionally, on July 17, 2007, Penske submitted the attached request to TDSL for the opportunity to inspect TDSL's long-term storage of the material at issue. In its Petition, TDSL has implied that it has allowed the storage conditions for the material to deteriorate since TDSL unilaterally and voluntarily exhumed the material in 2004. Penske would like the opportunity to inspect TDSL's manner of storage prior to the Commission's consideration of this matter.

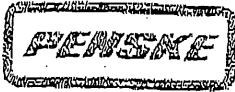
Thank you for your consideration of this request. If you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,

  
Pamela M. GiblinPMG:ms  
Enclosure

cc: Chairman Kathleen Hartnett White  
Commissioner Larry R. Soward  
Commissioner H. S. Buddy Garcia  
LaDonna Castanuela  
Garrett Arthur, Esq.  
Guy Henry, Esq.  
Richard Lowerre, Esq.  
Kerry Russell, Esq.  
Phil Comella, Esq.

<sup>2</sup> Texas Campaign for the Environment is closely aligned with TDSL and is jointly represented by TDSL's counsel in judicial appeals of prior TCEQ decisions. See Texas Disposal Systems Landfill, Inc. and Texas Campaign for the Environment vs. Texas Commission on Environmental Quality, Cause No. GN404231 (Consolidation of Cause Nos. GN402245, GN403519, GN403433, GN403551, GN403900, GN404119, GN404231), 200th Judicial District, Travis County, Texas.



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Michael A. Duff  
Senior Vice President and General Counsel

July 17, 2007

SENT VIA EMAIL

Gary T. Newton, Esquire  
General Counsel  
Texas Disposal Systems Landfill, Inc.  
P.O. Box 17126  
Austin, TX 78760-7126

Re: TCEQ Docket No. 2007-1019-IHW; Petition of Texas Disposal Systems  
Landfill, Inc. for Review of the Executive Director's Action and Order  
regarding Management of Hazardous Waste

Dear Gary:

By this letter Penske requests the opportunity for it and its representatives to inspect TDSL's long-term storage of the approximately 1,600 cubic yards of waste that TDSL excavated from its landfill in 2004.

In TDSL's recent petition to the Texas Commission on Environmental Quality, TDSL suggests that it has allowed the storage conditions for the material to deteriorate since 2004. Certainly TDSL recognizes that its voluntary and unilateral excavation of the waste together with its repeated refusal to allow Penske access to the waste for disposal carried with it the duty to manage that waste in a prudent manner consistent with applicable requirements. Even though TDSL has chosen not to store the waste in compliance with hazardous waste requirements, TDSL's allegation calls into question whether TDSL's storage of the material is in accordance with the terms of the letter from Wade Wheatley (TDSL's current Director of Facility Operations & Development) that you cite as authorization for your indefinite storage of this material. We would like to schedule this inspection as soon as possible.

Please let me know by July 18, 2007, whether TDSL will grant our request so that we may finalize the necessary arrangements.

Very truly yours,

Michael A. Duff

**BAKER BOTTS LLP**

may be subject to the provisions of the applicable laws and regulations

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FROM Pam Gibling  
DATE July 17, 2007  
PAGES 4

VOICE NO 512.322.2509  
FAX NO 512.322.8308  
RETURN TO ESG

TO Derek Seal  
Texas Commission on Environmental Quality  
CC Chairman Kathleen Hartnett White  
Texas Commission on Environmental Quality  
CC Commissioner Larry R. Soward  
Texas Commission on Environmental Quality  
CC Commissioner H. S. Buddy Garcia  
Texas Commission on Environmental Quality  
CC Garrett Arthur, Esq.  
Texas Commission on Environmental Quality  
CC Guy Henry, Esq.  
Texas Commission on Environmental Quality  
CC LaDonna Castanuela  
Texas Commission on Environmental Quality  
CC Richard Lowerre, Esq.  
Lowerre & Kelly  
CC Kerry Russell, Esq.  
Russell Moorman and Rodriguez LLP  
CC Phil Comella  
Seyfarth Shaw

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**MESSAGE**

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